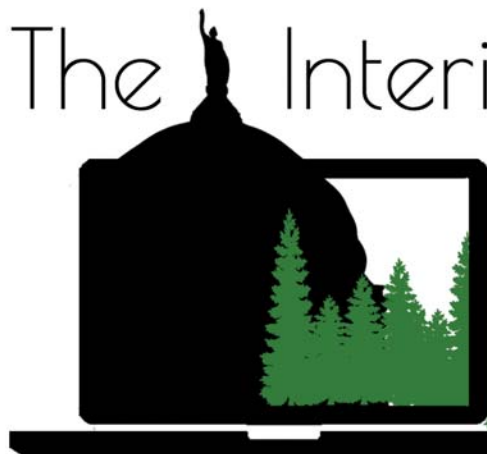


The Interim

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Newsletter

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for up-to-date information
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Tax Considerations for Legislator Per Diem Payments

This information is intended to provide general guidance to assist legislators and their tax preparers in handling legislative per diem payments that were made during the 2013 legislative session. Legislators should consult with income tax experts for specific requirements relating to individual circumstances.

General Rules

All legislator per diem payments not exceeding the amount allowed by federal law that are made to legislators living more than 50 miles from the Capitol Building are reimbursements made under an accountable plan, are not taxable income of the legislator, and are not subject to withholding or reporting. The difference between the amount allowed by federal law for reimbursement and the actual amount of per diem paid is considered unreimbursed expenses and, subject to certain limitations, may be a "miscellaneous items" deduction by the legislator. All legislators who lived more than 50 miles from the Capitol Building during the 2013 legislative session signed a certification indicating that they will make an election under 26 U.S.C. 162(h).

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the Capitol Building are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by these legislators are unreimbursed expenses and, subject to certain limitations, may be a "miscellaneous items" deduction by the legislator.

Legislator per diem payments made to legislators who live in Helena are reported as income and are subject to withholding. A legislator residing in Helena may not claim meal and lodging expenses incurred in Helena.

Accountable Plan

All legislator per diem payments made to a legislator whose home is more than 50 miles from the Capitol Building are employee reimbursements under an accountable plan for the following reasons:

- Under 26 U.S.C. 162(h), a legislator is considered to have substantiated living expenses if the legislator's place of residence is more than 50 miles from the Capitol Building.

- Federal law provides one type of accountable plan for when the employee's lodging plus meals and incidental expenses per diem reimbursement is substantiated (26 U.S.C. 62(a)(2)(A), 26 CFR 1.62-2(f)(2), and Rev. Proc. 2011-47).

Excess Per Diem Payment For Legislators Living More than 50 Miles Away

Under 26 U.S.C. 162(h), state legislators who live more than 50 miles from the Capitol Building may elect to claim their district residence as their "tax home." All legislators who lived more than 50 miles from the Capitol Building during the 2013 session signed a certification that they will make an election under 26 U.S.C. 162(h). Consequently, legislators who fall into this category should share this article with their tax return preparers or become familiar with the regulations and the manner in which the election is made. The Department of the Treasury recently published regulations for making this election, which can be found under 26 CFR 1.162-24. The portion of the regulations regarding the election provides as follows:

"(e) Election --(1) Time for making election. A taxpayer's election under section 162(h) must be made for each taxable year for which the election is to be in effect and must be made no later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year.

(2) Manner of making election. A taxpayer makes an election under section 162(h) by attaching a statement to the taxpayer's income tax return for the taxable year for which the election is made. The statement must include--

(i) The taxpayer's name, address, and taxpayer identification number;

(ii) A statement that the taxpayer is making an election under section 162(h); and

(iii) Information establishing that the taxpayer is a state legislator entitled to make the election, for example, a statement identifying the taxpayer's state and legislative district and representing that the taxpayer's place of residence in the legislative district is not 50 or fewer miles from the state capitol building."

The amount considered substantiated under federal law cannot exceed the greater of the federal or state per diem rates for Helena, as long as the state rate does not exceed 110 percent of the federal rate (26 U.S.C. 162(h)(1)(B)). In 2013, the state rate for lodging in Helena was \$83 plus applicable taxes and \$23 for meals for a total of \$106 (plus taxes) per day (see section 2-18-501, MCA). Likewise, in 2013, the federal rate for lodging was \$83 and \$56 for meals and incidental expenses for a total of \$139 per day (see U.S. General Services Administration rates at www.gsa.gov).

Reimbursements paid "under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA) . . .)." (26 CFR 1.62-2(c)(4)).

Montana legislators were paid per diem for 107 regular legislative days at \$109.78 per day, for a total of \$11,746.46. Montana law provides for reimbursement only for breaks of three days, while 26 U.S.C. 162(h)(2)(A) allows deemed living expenses for breaks of four consecutive days or less. The 2013 Legislature took a three-day break from March 1 through March 3 and a four-day break from March 29 through April 1. State per diem was paid for three days during both breaks. Your tax return preparer may determine that both breaks were in compliance with the four-day limitation under federal law. By adding one day of expenses during the four-day break, your tax return preparer may also determine there were 108 legislative days for purposes of 26 U.S.C. 162(h).

Assuming your tax return preparer multiplies 108 legislative days by \$139 per day (using federal per diem), the resulting total would be \$15,012 in deemed living expenses. That amount is \$3,265.54 more in deemed living payments than you received (\$15,012 minus \$11,746.46). Your tax return preparer may determine that the \$3,265.54 is an unreimbursed business expense and a miscellaneous itemized deduction on a 1040 Schedule A, subject to the 50 percent meals allocation under 26 U.S.C. 274(n)(1)(A) (\$56 of the daily per diem is considered meals and incidental expenses) and the requirement that miscellaneous itemized deductions must exceed 2 percent of adjusted gross income.

Legislators living more than 50 miles from the Capitol Building do not have their per diem payments reported on their W-2 Forms.

Helena-Area Legislators

Under 26 U.S.C. 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the Capitol Building. Therefore, those legislators must follow the provisions of 26 U.S.C. 274(d) and must specifically substantiate all lodging and meal expenses.

Because 26 U.S.C. 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

Per Diem Payments During the Interim

This article does not address legislative per diem payments that are made during the interim. During the interim, leg-

islators are only paid expenses when a claim is submitted. Additionally, there are two types of payments that legislators receive that are considered taxable:

- Non-overnighted meals. During the legislative interim, a legislator may claim meals for which receipts are not required. If the legislator is reimbursed for meals but does not incur an overnight stay, the meals are reported as taxable to the legislator.
- Non-receipted lodging. A legislator may claim non-receipted lodging when staying with a friend or family member and is reimbursed \$12 per night of lodging. This lodging payment is reported as taxable to the legislator.

Committee Explores Varying Options for Mental Health Services

The Children, Families, Health, and Human Services Interim Committee heard the pros and cons of two different approaches to providing mental health services in the community when it met last month in Helena.

Committee members focused on supervised outpatient treatment in communities and the use of 16-bed facilities for inpatient treatment. Stakeholders had earlier suggested both ideas as alternatives to commitment to the Montana State Hospital.

The discussions were part of the committee's House Joint Resolution 16 study of state-operated institutions and the mental health services provided at the facilities.

The committee also heard presentations related to its Senate Joint Resolution 20 study of prescription drug abuse and received several updates on current activities of the Department of Public Health and Human Services.

Mental Health Treatment Options

HJR 16 called for a review of whether the state's system of institutions should be changed to provide more effective treatment or to provide services in more cost-effective ways. In reviewing the use of 16-bed facilities for inpatient treatment, the committee heard about laws governing the facilities and also received an overview of how several other states use similar facilities.

The committee learned that the Legislature tried to fund services at 16-bed facilities in 2003 and 2007. However, no providers established the facilities, largely because of concerns that the cost of providing the services would exceed the available funding.

At the Jan. 10 meeting, state Medicaid Director Mary Dalton and two other panelists -- Lyle Seavy of the Billings Clinic and Paul Meyer of Western Montana Mental Health Center

-- discussed those past efforts and the barriers to providing services at 16-bed facilities. They said concern remains about available payment sources. Shortages of mental health professionals in Montana also could make it difficult to staff facilities if they were spread around the state.

Meyer said the facilities might be more successful if they were used to provide short-term stabilization and treatment. Currently, state law allows a judge to commit someone to a 16-bed facility for up to 90 days, possibly followed by recommitment.

Several speakers also discussed the idea of "assisted outpatient treatment." This option allows a person to receive monitored treatment in the community rather than an inpatient facility. The committee reviewed the Montana laws that allow for such treatment and heard from speakers about how those laws have been used in some areas of the states. Some speakers also discussed the factors that make it difficult to use the laws more widely.

Kristina Ragosta of the national Treatment Advocacy Center said supervised outpatient treatment can be successful because patients know their compliance is being monitored by a court and by mental health providers. However, she said states must have a good array of community mental health services in order for outpatient treatment to work.

Other panelists were:

- Kim Coddling of the Gallatin Mental Health Center, which has monitored the increasing number of Gallatin County residents committed to community treatment rather than the State Hospital in recent years;
- Lewis and Clark County Attorney Leo Gallagher, who talked about reasons prosecutors may shy away from seeking community commitments;
- Kim Lahiff of the Department of Corrections, who discussed the supervision of probationers and parolees who require mental health treatment; and
- Beth Brenneman of Disability Rights Montana, who stressed that adequate community services must be in place for supervised outpatient treatment to succeed.

State Programs and Prescription Drug Abuse

The committee continued its SJR 20 study with presentations on ways that prescription drug monitoring programs can be used and on efforts by Montana programs to reduce opioid use and abuse.

Peter Kreiner of the Prescription Drug Monitoring Program Center of Excellence at Brandeis University provided examples of how data from state monitoring programs has pinpointed geographic areas where use of prescription

opioids appears higher than normal. He said law enforcement can use that information to investigate drug diversion activity. State and community officials also can use it to target their prevention, treatment, and education efforts.

Medicaid Pharmacist Dave Campana, Dr. Carla Huitt of the Workers' Compensation Claims Assistance Bureau, and Montana State Fund Medical Team Director Bridget McGregor discussed the number of prescription drug claims paid by their programs. They also outlined steps the programs have taken to reduce the prescribing and use of opioid painkillers.

A representative of the Montana Medical Association also said it has formed work groups to review prescription drug issues and make recommendations to the committee. The committee agreed to monitor the association's efforts.

Updates on DPHHS Activities

The committee heard about several DPHHS-related matters, including:

- a demonstration project that will allow the agency more flexibility in using federal foster care funds;
- a potential shortfall in the state Medicaid budget and possible sources of funding to cover the projected deficit;
- the federal government's approval of an expansion of the Medicaid waiver program that serves mentally ill adults who would not otherwise be eligible for Medicaid, from 800 slots to 2,000 slots; and
- the number of Montanans -- 1,318 by early January -- who applied for health insurance through the federal government's web site and were found to be eligible for Medicaid. DPHHS employees are manually entering information about the individuals into the state's Medicaid system, because the federal system is not yet able to enroll the individuals electronically.

Providers of Medicaid long-term care services also spoke to the committee about the services they provide and the challenges they face, including barriers to obtaining Medicaid reimbursement for certain costs inherent to providing the care. They also discussed concerns with the way in which DPHHS has allocated funding for assisted living facilities.

Next Meeting

The committee meets next on March 13-14 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

ELG to Review SB 175 Impacts in February

The Education and Local Government Interim Committee will take a look at the impacts of Senate Bill 175, the major school funding bill of 2013, when it meets Feb. 3-4 in Helena.

In addition, the newly formed Subcommittee on Shared Policy Goals for Education will meet for the first time on Feb. 3, before the full committee convenes.

During the full committee meeting on Feb. 3, panels representing various school district caucuses will discuss the ways that SB 175 has affected school districts and will report on other issues facing the districts. The Legislative Fiscal Division will also provide a report on the fiscal impacts of SB 175.

Among numerous other changes, SB 175 increased state funding for public schools and modified the school funding formula by increasing and revising the basic entitlement and creating a natural resource development K-12 funding payment to offset local property tax increases starting in 2015. The bill also created a mechanism that spreads oil and gas revenues to neighboring districts to mitigate impacts of oil and gas development.

Other agenda items for the two-day meeting include:

- a follow-up discussion on 20-7-101, MCA, and the process for adoption of school accreditation standards;
- presentations on current programs and research related to early childhood education;
- a progress report from the House Joint Resolution 2 Electronic Records Management Work Group; and
- various updates from the Office of Public Instruction.

The HJR 2 Electronic Records Management Work Group sanctioned by ELG continues to meet and make progress toward determining recommendations to present to the committee at its April meeting.

Next Meeting

The committee meets next on Feb. 3-4 in Room 137 of the Capitol in Helena. On Feb. 3, the Subcommittee on Shared Policy Goals for Education will meet from 8 a.m. to 11 a.m., and the full committee will convene at 1 p.m. The committee will reconvene at 8 a.m. on Feb. 4. For more information on the upcoming meeting and the committee's activities, including the subcommittee and work group, visit the committee's website or contact Pad McCracken, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: padmccracken@mt.gov or 406-444-3595

EQC Hears Hunting and Fishing License, Land Management Ideas

The Environmental Quality Council's Jan. 8-9 meeting included wide-ranging discussion of a host of issues, including the council's three primary studies that cover hunting and fishing licenses, federal land management, and management of certain state properties.

The EQC kicked off its meeting with an update on the work done by an advisory council appointed by the governor to develop ideas for simplifying the state's hunting and fishing license system and stabilizing funding for the Department of Fish, Wildlife and Parks. House Bill 609 called on the EQC to undertake a similar study, so the council has incorporated the advisory council's effort into its work plan.

The advisory council has made several preliminary recommendations, including:

- standardizing the free and discounted hunting and fishing licenses offered to youth, seniors, and the disabled. This could include changing prices for these licenses to half the cost of the equivalent full-priced licenses.
- raising the age at which seniors are eligible for discounted licenses, from 62 to 70;
- consolidating youth license pricing from three age groups to two;
- creating a base hunting license that must be purchased before individual species tags;
- doubling nonresident moose, mountain sheep, mountain goat, and bison licenses, from \$750 to \$1,500 each;
- reducing the time between legislative review of the license structure and prices from approximately 10 years to four years; and
- reducing the price of the "Come Home to Hunt" license to 50 percent of the current price and increasing the cost of the "Nonresident Relative of a Resident" license to equal 50 percent of the full-priced equivalent.

The advisory council continues to meet and expects to bring a full slate of preliminary recommendations to the EQC in March.

As part of its review of licensing systems in other states, the EQC heard from Wyoming Game and Fish Director Scott Talbott about the financial difficulties his department has faced in recent years, resulting in about \$8 million in budget cuts, use of general fund monies to offset some costs, and a proposal to increase some license fees by 10 percent.

The EQC also received information in January about the potential for generating revenue to fund wildlife programs from nonconsumptive users, such as wildlife and bird watchers. Four states are currently authorized to use a portion of their sales tax to support wildlife and other conservation-type programs. Other options include using general fund money, reallocating or increasing the accommodations tax or motor vehicle registration fees, creating a voluntary tax checkoff, and requiring all users of FWP lands to purchase a conservation license. Currently, only hunters and anglers are required to buy conservation licenses.

Federal Land Management

A panel discussion and public comments about ownership and management of federal lands in Montana dominated the first afternoon of the EQC's meeting.

Six speakers were asked to compare the conditions on state and federal lands, analyze laws affecting ownership, jurisdiction, and management of public lands, and offer solutions to identified problems.

Speakers were:

- Tom France of Missoula, an attorney with the National Wildlife Federation;
- attorney Ken Ivory of West Jordan, Utah, a state representative since 2011;
- Peter Kolb of Missoula, the Montana State University Extension forestry specialist and an adjunct associate professor at the University of Montana;
- Doyel Shamley of Stateline, Nev., who is CEO of Veritas Research Consulting;
- John Tubbs, director of the Montana Department of Natural Resources and Conservation; and
- Martha Williams of Missoula, who teaches environmental and wildlife law at the University of Montana School of Law, supervises the Public Land and Resources Law Review, and is co-director of the Land Use & Natural Resource Clinic.

An EQC work group headed up by Sen. Jennifer Fielder has met twice a month by teleconference since October. The group, which includes Sen. Brad Hamlett and Reps. Ed Lieser and Kerry White, has identified a wide range of concerns with federal land management and will continue to identify possible solutions.

The EQC is directed to study federal land management by Senate Joint Resolution 15, sponsored by Fielder and passed in 2013.

Study of Selected State Properties

The EQC's SJR 4 study of the Montana Heritage Commission's administration of state-owned properties at Virginia City, Nevada City, and Reeder's Alley in Helena continues to focus on three areas: funding sources for the maintenance of properties and operation of the sites, statutes that govern the MHC, and the processes provided in state law and administrative rule for acquisition and disposal of properties.

The SJR 4 work group, consisting of Sens. Jim Keane and Rick Ripley and Reps. Jeff Welborn and Virginia Court, have identified several options for members to consider. Some of the options will require legislation, and others may take the form of recommendations to the MHC. The EQC asked the work group to continue its efforts in conducting the study.

Septic System Inspections

At the request of Rep. Lieser, the council explored policy considerations surrounding inspection of septic systems at the time of property transfers. Lieser sponsored HB 483 during the 2013 session. The bill would have required the Board of Environmental Review to adopt rules providing standards that local boards of health could use for inspecting septic systems when a property is transferred.

A panel of speakers discussed the problems that aging septic systems pose to public and environmental health. Speakers also talked about the policy that HB 483 would have implemented and other approaches that could be taken to encourage septic system maintenance and prevent failures. Panelists were a registered city-county sanitarian, a representative of the Montana Association of Realtors, and the executive director of the Whitefish Lake Institute.

In addition, DEQ staff discussed how septic systems are permitted in Montana, and council staff provided information on how some other states and local governments regulate septic system inspection.

Next Meeting

The council meets next on March 19-20 in Room 172 of the Capitol in Helena. For more information on the council's activities and upcoming meeting, visit the council's website or contact Joe Kolman, council staff.

Council Website: www.leg.mt.gov/eqc

Council Staff: jkolman@mt.gov or 406-444-3747

LJIC Set to Meet Feb. 13-14

The Law and Justice Interim Committee will tackle the topic of gun ownership and mental illness at its two-day meeting in February. It will also continue work on its studies of the parole system and of family law.

Members first heard about gun ownership and mental illness in September and requested more information. On Feb. 13, panelists representing a wide range of interests will discuss:

- the National Instant Criminal Background Check System;
- the records Montana currently provides to the federal government and how those records are used when a background check is conducted;
- the records the state doesn't provide and how that reporting gap might affect federal funding;
- how reporting certain information might run counter to Montana's strong constitutional right to privacy; and
- what, if anything, the Legislature might do to bring the state into compliance with federal reporting laws, if it desires.

The discussion also will include time for comments from members of the public.

Public Comment on Parole System

As a continuation of the Senate Joint Resolution 3 study of the Board of Pardons and Parole, the committee will hear from a district court judge about the factors he takes into account when sentencing criminal defendants. Board staff and Department of Corrections staff also will discuss the department's risk and needs assessment models and will explain how conditions placed on parole are used in the department's supervision of parolees. Other speakers will focus on the screening committee process in use at the Helena Prerelease Center.

The SJR 3 portion of the agenda also will include a brief discussion of the repeal of so-called "good time," the possibility of recording parole hearings, a summary of the work of an advisory council that met in the 1990s and made recommendations about the parole system, certificates of rehabilitation in other states, and how the provisions of the Montana Administrative Procedure Act relate to the parole board.

At the February meeting, members of the public will have an opportunity to suggest changes the committee should consider making to the parole board or the parole process. The comment period is slated for the afternoon of Feb. 14. Individuals wishing to speak during that time should review the committee's [public comment guidelines](#), which are available on the committee's website. Depending on the number of people wishing to speak, the presiding officer may choose to limit the amount of time each speaker may use.

Also on Tap

The committee will continue work on its SJR 22 study of family law by hearing from the judicial branch about funding and workload needs related to family law cases. Staff also will

present information related to ideas for legislation to change procedural aspects for cases involving divorce proceedings and parenting plans.

Other topics on the agenda will include:

- agency updates from the Department of Corrections, the Board of Pardons and Parole, and the Office of the Public Defender;
- an update on the study of state institutions that is being conducted by the Children, Families, Health, and Human Services Interim Committee; and
- an update on restorative justice grants authorized by the 2013 Legislature.

Next Meeting

The committee meets next at 8:30 a.m. on Feb. 13 in Room 102 of the Capitol in Helena. The meeting will continue at 8 a.m. on Feb. 14. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Rachel Weiss, committee staff.

Committee Website: www.leg.mt.gov/ljic

Committee Staff: rweiss@mt.gov or 406-444-5367

Committee to Review 18 Audits in February

The Legislative Audit Committee will meet Feb. 13 to review recent audits of state programs and services. The Legislative Audit Division anticipates reporting on the following topics.

Financial Compliance Audits

- Board of Investments
- Commissioner of Higher Education
- Consumer Counsel (Contract Audit)
- Department of Commerce
- Department of Fish, Wildlife and Parks
- Guaranteed Student Loan Program
- Legislative Branch (Contract Audit)
- Office of Public Instruction
- Miles Community College (Contract Audit)
- Montana State Library
- Montana State Lottery
- Montana State University Financial Statement
- Montana State University Workers' Compensation (Contract Audit)

- Teachers' Retirement System
- University of Montana Financial Statement

Performance Audits

- State Investment Management and Governance Practices -- Montana Board of Investments
- Worker's Compensation Premium Review -- Montana State Fund

Information Systems Audit

- Vital Statistics Information Management System -- Department of Public Health and Human Services

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies or their programs, including the Montana University System. For more information, call the division at 406-444-3122.

To report suspected improper acts committed by state agencies, departments, or employees, call the division's fraud hotline at 800-222-4446 or 444-4446 in Helena.

Next Meeting

The committee meets next at 8 a.m. on Feb. 13 in Room 172 of the Capitol in Helena. For more information on the committee's activities or upcoming meeting, visit the committee's website or contact Legislative Auditor Tori Hunthausen.

Division Website: www.leg.mt.gov/audit

Division Staff: 406-444-3122

Council to Continue Wide-Ranging Review of Legislative Practices

The Legislative Council will continue its exploration of legislative practices in other states when it meets March 20 in Helena. The council also will receive information on public outreach, staffing, legislator compensation, and orientation and training.

Opportunities for public comment will be scheduled in both the morning, following a presentation on annual sessions, and in the afternoon. All stakeholders from the public, current and past legislators, lobbyists, agency representatives, and public interests groups will be given an opportunity to speak on their ideas for legislative improvement.

At its Jan. 8 meeting, the council received a history on annual sessions and looked at the structure of legislatures in seven similar states. Members also approved an extended orientation and training schedule for the 2015 legislative session and

tentatively set party caucuses and legislator orientation for Nov. 12-14.

The March 20 meeting will begin at 9 a.m. in Room 317 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Susan Byorth Fox, committee staff.

Committee Website: www.leg.mt.gov/legcouncil

Staff: sfox@mt.gov or 406-444-3066

Tax Appeals, Oversize Loads on RTIC Agenda

The Revenue and Transportation Interim Committee will continue work on studies of the taxpayer appeals process and the movement of oversize loads through the state when it meets Feb. 18-19 in Helena.

For the Senate Joint Resolution 26 study of the movement of oversize loads, the committee will hear from local government representatives and will discuss a federal study of truck size and weight limits required by federal highway funding legislation known as MAP-21. In addition, the committee will receive follow-up information on the funding of Alberta's High Load Corridors and on oversize load fees in surrounding states.

For the SJR 23 study of the taxpayer appeal process, the committee will wrap up its effort to identify issues from interested parties by hearing comments from centrally assessed property taxpayers. Based on comments received at the December meeting, the committee will also receive presentations aimed at acquainting members with property assessment notices, property tax bills, and protested tax payments.

The committee also will hear more about the operations of the Workers' Compensation Court as an example of a specialty court.

Also during the February meeting:

- the departments of Revenue and Transportation will provide agency updates;
- committee members will have the opportunity to tour the Department of Revenue income tax processing center on the morning of Feb. 19;
- the Department of Revenue will respond to a committee request for more information about local government reimbursements, which are often referred to as "entitlement share" payments;
- Legislative Fiscal Division staff will provide a general fund revenue update to assist the committee in its revenue estimating and monitoring duties and will update the

income tax credit analysis that the committee received last interim; and

- the committee will begin its statutorily required review of DOR and MDT advisory councils. Interim committees are charged with recommending retention or elimination of these councils to the next Legislature. Required reports will be reviewed at a future meeting.

Next Meeting

The committee meets next on Feb. 18-19 in Room 102 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memoore@mt.gov or 406-444-4496

Subcommittee Recommends Extensive Clean Up Election Laws

A subcommittee of the State Administration and Veterans' Affairs Interim Committee met Jan. 17 to discuss how to clean up inconsistent state laws concerning special purpose district elections and school elections.

The subcommittee -- made up of Reps. Bryce Bennett, Joanne Blyton, and Kathy Swanson -- was appointed to undertake the study requested in Senate Joint Resolution 14, which sought an examination of how to combine primary and school elections. However, the subcommittee determined at its first meeting that combining these elections posed too difficult a task, technically. Members set that goal aside in favor of pursuing a general cleanup of inconsistent statutes concerning election dates and deadlines.

Rolling up their sleeves, the subcommittee members in January worked section by section through statutes containing inconsistent language about how special purpose district elections are conducted and timelines related to school elections. Representatives of the Secretary of State's office, county election administrators, cities, counties, and school districts discussed their perspectives and offered recommendations on each statute.

Areas for Revision Identified

Following the discussion, subcommittee members determined that general consensus existed on how to handle inconsistencies concerning special purpose district elections. They voted to recommend that SAVA authorize a committee bill for the 2015 Legislature that would:

- clarify the definitions for general, primary, and school elections;

- clarify statutory language setting the day for the general election and primary elections;
- establish consistent candidate filing deadlines for even-year and odd-year elections so that the filing deadlines in any election year would be the same -- no sooner than 145 days and no later than 85 days before the election;
- establish an umbrella statute concerning special purpose district elections and election notice provisions so that individual laws for each type of special purpose district could simply reference the umbrella statute rather than duplicate language;
- provide that candidate filing deadlines for board members of special purpose districts would be the same as for all other types of candidates (no sooner than 145 days or later than 85 days before the election);
- clarify that the county election administrator is responsible for special purpose district elections and that if the district is within more than one county, the county with the most electors in the district will conduct the election; and
- require that most elections concerning special purpose districts be held on the same day as the regular school election, which is the first Tuesday after the first Monday of May each year. The requirement would not apply to elections related to finance, such as approval of bonds or of tax or fee assessments.

The bill draft will be presented to the full committee at its April 8 meeting. In the meantime, legislative staff will work with school district representatives and county election administrators to hammer out details of a bill draft to clean up school election laws. The SJR 14 Subcommittee will then meet by conference call to consider recommendations from the working group and to finalize a second bill recommendation for SAVA's consideration on April 8.

The date of the SJR 14 Subcommittee conference call has not been set, but is likely to be sometime in March.

Next Meeting

The full committee meets next at 10 a.m. on Feb. 6 in Room 102 of the Capitol in Helena. The meeting will focus on the House Joint Resolution 1 study of the Office of the Commissioner of Political Practices. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee's staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 444-3596

CKST Water Rights Compact Dominates WPIC Discussion in January

Supporters and detractors alternately hailed and assailed a proposed water rights deal with the Confederated Salish and Kootenai Tribes (CSKT) last month, when the Water Policy Interim Committee hosted more than four hours of discussion on the proposal.

The committee made study of the compact -- which would settle the tribe's water rights claims out of court -- a focus for the 2013-2014 interim. The full Legislature must approve any compact, as it has done for 14 federal agencies and Indian tribes. The CSKT compact is the last outstanding agreement.

At the Jan. 6 meeting, John Tubbs, Department of Natural Resources and Conservation director, discussed a report issued by the Reserved Water Rights Compact Commission and answered questions about the compact.

The compact commission negotiated the proposed agreement with the tribes before the 2013 legislative session. However, the 2013 Legislature did not approve the compact. Without an approved compact, the tribes would have to file thousands of water rights claims by mid-2015 to be litigated in the Montana Water Court.

At the end of the committee's discussion, members asked for additional information, such as copies of past treaties with Indian tribes and analyses of court rulings. The committee is expected to discuss the topic again at its March meeting.

Exempt Well Rule: Round 2

A majority of WPIC members again repeated concerns over a proposed DNRC rule related to exempt groundwater wells. The agency first proposed in August to change the definition of "combined appropriation" in administrative rule. The term is referred to, but undefined, in statute.

After the committee opposed that rule proposal in September, DNRC proposed a new set of rules, essentially scaling the amount of water allowed to exempt wells to 10 acre-feet a year for 40 acres -- and less for smaller parcels.

By a 6-2 vote on Jan. 7, WPIC again submitted formal comment on the rule and recommended that the Environmental Quality Council formally object to the rule. In the letter of comment, a majority of the committee members reviewed efforts during the last legislative interim and legislative session, when the interim committee drafted a bill to define combined appropriation. The 2013 Legislature passed the bill, but Gov. Steve Bullock vetoed it.

The EQC, which has statutory oversight over DNRC, objected to the rule on Jan. 9, again delaying its implementation

for up to six months. The DNRC subsequently withdrew its proposed rule on Jan. 21.

Other Agenda Items

In other discussion at the Jan. 6-7 meeting:

- DNRC Water Resources Division Administrator Tim Davis told the committee that water rights claims examiners need to “standardize” 90,000 water rights claims, thus extending the division’s involvement with processing pre-1973 water rights for Water Court proceedings;
- Assistant Attorney General Cory Swanson told legislators they could be asked to fund a damages lawsuit against the state of Wyoming if the state of Montana prevails in a liability case over Powder River basin water use;
- professors from the University of Montana and Montana State University suggested ways the Legislature might aid farmers and irrigators planning for future agricultural wa-

ter availability, perhaps by funding new towers gathering climate information or centralizing relevant climate data at the State Climate Office in Missoula;

- Eric Johnston of the U.S. Forest Service’s Region 1 office said the agency may file up to 30 water right reservations per year for at least 30 years under the terms of a water rights compact with the state. The reservations are instream rights for fish and are located within forest boundaries.

Next Meeting

The committee meets next on March 17-18 in Room 172 of the Capitol in Helena. For more information on the committee’s activities and upcoming meeting, visit the committee’s website or contact Jason Mohr, committee staff.

Committee website: www.leg.mt.gov/wlwf

Committee staff: jasonmohr@mt.gov or 406-444-1640

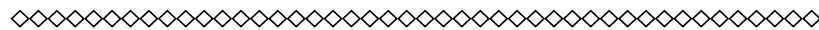
The Back Page

It’s Just Compensation

by Dave Bohyer, Director
Office of Research and Policy Analysis

Editor’s Note: In 2013, House Joint Resolution 17 asked the Legislative Finance Committee to study “the state pay plans.” The study was prompted by reports that some, but not all, state employees received pay increases during the Fiscal Year 2011-2012 biennium under what was perceived in some quarters to have been a legislatively imposed “pay freeze.”

The HJR 17 study is underway, and Legislative Fiscal Division staff members -- Kris Wilkinson, in particular -- have conducted and presented a substantial amount of research in the last six months. In this Back Page article, Legislative Services Division Research Director Dave Bohyer provides some historical perspective regarding the development of the state’s primary pay plan, commonly referred to as “Broadband” and “Pay Plan 20.”



Author’s Note: *When I joined the Legislative Services Division in 1981,¹ the statutory “pay plan” was barely four years old, having been first codified in 1977.² Prior to the 1977 plan, back to at least 1940, the pay plan, such as it was, wasn’t a statutory plan but a process that authorized the Board of Examiners to establish classes of jobs and the pay levels for each job class.³ Predictably, the 1977 legislation and the pay plan itself had advocates and detractors, and pay plan implementation raised many challenges. So not surprisingly, the discussion underpinning HJR 17 (and House Bill 13) throughout the 2013 legislative session rung as familiar echoes of legislative and employee concerns that had occurred in 1977 and the years following. I hope that revisiting those earlier times informs the Legislative Finance Committee’s discussion and, perhaps, conversations other legislators might have in different venues and circumstances.*

March of 2013 found the 63rd Legislature in its third month, the appropriation subcommittees putting the finishing touches on HB 2 and other bills, and various reports continu-

ing to circulate that about half of Montana’s state employees received pay raises during the 2011-2012 biennium while the other half didn’t.

Rep. Steve Gibson, as chair of the Joint Appropriations Subcommittee on the Judicial Branch, Law Enforcement, and Justice, was particularly concerned about pay administration. He sponsored HJR 17, a joint resolution to study state pay plans. Gibson focused his testimony supporting HJR 17 on examining pay fairness, including known and perceived disparate pay and pay administration among and even within state agencies during the 2011-2012 biennium. He described the state’s pay plans in terms of being arbitrary, confusing, and even discriminatory and expressed concern with the resulting confusion and misperceptions among legislators and the public.⁴

Sen. Scott Sales, presenting HJR 17 on second reading to the full Senate, was perhaps more pointed, questioning the sustainability of the broadband pay plan, speculating about abuse of broadband flexibility, and hinting at possible cronyism.⁵

Such were the circumstances influencing formal and informal discussions of state employee pay during the 2013 Legislature. So in some measure it should be instructive to see how the state arrived at the current broadband pay plan.

As statutorily enacted, the 1977 pay plan was a “grade and step” plan, in which each job or position in the executive branch was assigned to one of 25 “grades”⁶ and where positions at the lower grades required less knowledge, skill, ability, education, responsibility, and supervisory authority than positions at higher grades. The single plan would cover all executive branch employees, including the “blue collar” occupations and state teachers.

Each of the 25 grades was further divided into 13 “steps” that indicated, essentially, an employee’s years of service in the position. The pay for each “step” within the lower grades was separated by 1.4 percent to 2.2 percent compared with differences in the higher grades from about 0.4 percent to 0.9 percent between steps.⁷ The difference in pay between a given grade and step and the same step at the next highest grade was about 9 percent at the lower grades and increased to about 9.6 percent at the highest grades.

Progression from step to step within a grade typically occurred on an annual basis on the anniversary date of a person’s employment in the position, assuming adequate budget resources and at least satisfactory performance by the employee. Progression between grades typically occurred as a result of progression through a job series -- promotion from Accountant 1 to Accountant 2 to Accountant 3, for example. It also could happen as a result of position reclassification, which occurred because of changes in job duties, responsibilities, or complexity or in the knowledge, skill, and ability needed to perform the job duties.

The design of the 1977 pay plan gave the Legislature the ability to revise the amounts of pay for the various grades and steps, thus recognizing such factors as changing pay in the labor markets, general inflation, and state business needs to recruit and retain qualified employees. For example, in passing HB 834, the 45th Legislature in 1977 increased employee pay and benefits for Fiscal Year 1978 by “adding \$416 (to the 1977 grade/step), multiplying that by 2.35 percent, and adding \$125 in health insurance.”⁸ The ultimate effects of the fixed-dollar increase, the percentage increase, and the health insurance component ensured that total compensation increased relatively more in the lower grades than in the upper

grades, although the total dollar amounts increased somewhat more as the grade level increased.

During testimony and debate on HB 834, everyone directly involved seemed to have recognized that the then-existing pay regime was not working -- for employees, agency managers, or the Legislature. Proponents extolled the plan’s predictability, flexibility, and legislative control while detractors stated concerns about employees’ rights to collectively bargain and the pay prerogatives given to managers.

Of particular concern to opponents were provisions allowing “meritorious promotions.” In regard to the salary promotion provisions, one witness stated: “This will cause problems because a promotion may be given on political influences and other things besides performance.”⁹ Another witness noted: “The problem [with the promotion authority] seems to be that we have no uniform system at this time to determine how [the plan] will be utilized and every department could use it differently, some properly, others improperly.”¹⁰ Those statements probably sound familiar to current legislators.

From its humble statutory beginnings in 1977, the “pay plan”¹¹ has been amended every session since. Significantly, three additional, separate pay plans were enacted in 1979, for teachers, state liquor clerks, and “blue collar” workers (primarily laborers and craft jobs).¹² The challenges and conflicts raised during testimony and debate in 1977 -- between the plan’s predictability, flexibility, and legislative control and the lack of clear statutory guidance regarding how labor issues would be negotiated and how, specifically, pay was to be administered within each of the pay plans -- arose in the years following enactment, as predicted.

Increases in base pay were relatively robust during the pay plans’ early years but, even so, typically lagged behind general inflation. During the mid- and late 1980s and into the early 1990s, base pay raises and general inflation decreased to the mid- to low single digits, with state employee pay frozen. No inflationary increase in base pay occurred in FY 1988 and FY 1989, due primarily to budget issues and a national recession.¹³ Legislation providing for general increases included appropriations, but it is unclear whether the appropriated amounts provided full funding of the increases.¹⁴

By the early 1990s, management practices in the private and public sectors had transitioned away from grade-and-step matrix plans toward “open range” pay plans. Open range plans basically consolidated many pay “grades” into fewer grades and eliminated steps altogether. They also provided broader entry level and maximum salaries for each pay grade or “range.” And it was the open range practices that most attracted the members of the Committee on State Employee Compensation (CSEC), created under House Bill 786 in 1989 to study all aspects of state employee pay.

The CSEC conducted its investigation during the 1989-1990 interim and, in its final report, issued findings that:

- state employee salaries averaged between 13 percent and 18 percent lower than average salaries in the labor market;¹⁵
- the excessive number of exceptions to the pay plan indicated agencies' inability to hire qualified employees at the "entry level" pay for many positions and jobs;
- salary ranges for the higher grades were further behind average salaries in the labor market than salary ranges in the lower grades; and
- 14 percent of state employees were leaving state service annually at an estimated cost of \$5,000 to \$10,000 to the state to replace each employee, including costs of recruitment, training, and lost productivity.¹⁶

The report went further, identifying as "problems:"

- pay ranges for each grade were too low to provide competitive entry-level salaries or to provide salaries at the top of the ranges competitive enough to keep experienced employees from leaving state service; and
- if the state started then and adjusted the current pay ranges in each of the following years to keep up with movement of salaries in the market, the pay ranges would remain behind what other Montana employers and other state governments pay.¹⁷

To address the findings and problems, the CSEC recommended to the 52nd Legislature in 1991:

- the state should be guided by a market-based pay strategy in order to attract and retain qualified employees; and
- the midpoint salaries of each grade in the pay plan should match average salaries found in the surveyed market for similar jobs.¹⁸

The CSEC's recommendations were incorporated into draft legislation for the 1991 Legislature and introduced as HB 509. The bills's statement of intent noted:

In order to recruit and retain competent and qualified public employees to perform required services for the state, it is the intent of the legislature to provide for a state employee compensation system based on the prevailing compensation practices found in relevant public sector and private sector labor markets.

As enacted, HB 509 revised the purpose and intent of the pay plan (2-18-301, MCA) as follows:

The purpose of [the pay plan] is to provide the market-based compensation necessary to attract and retain competent and quali-

fied employees in order to perform the services the state is required to provide to its citizens.

Although the legislation did not consolidate the 25 pay grades into a lesser number, it did eliminate "steps" within each of the pay grades.¹⁹ While eliminating steps, the Legislature also revised the pay ranges for each grade to better reflect the labor markets for the variety of positions within the executive branch. It expanded the pay ranges for most of the grades involving mid- and higher grade professional and technical positions and narrowed the pay ranges for most of the lower-graded positions. However, the Legislature left intact the separate pay plans for teachers, state liquor store employees, and employees paid under the "blue collar" plan. The average increase among state employees on the main pay plan was 7.4 percent in FY 1992 and 5.2 percent in FY 1993, reflecting the Legislature's goal of closing somewhat the approximate 15 percent pay gap then existing between state employees' pay and the various labor markets.²⁰

The remainder of the 1990s saw successive legislatures and administrations provide pay increases through annual pay plan adjustments that more or less kept pace with general inflation. In FY 1994, a particularly difficult fiscal year, the Legislature didn't grant any increase. But in two more robust fiscal years, 1993 and 1997, it granted general increases that exceeded inflation by about 2.2 percent and 1.6 percent, respectively.

Significantly, the 56th Legislature in 1999 directed the Department of Administration to "develop and implement alternative pay and classification plan (sic) through demonstration projects for certain classes, occupations, and work units."²¹ The "demonstration projects" can be attributed to the difficulty state agencies were then having in recruiting and retaining various technical and professional employees, such as health care professionals, engineers, and accountants. Given legislative direction and authority to develop and implement demonstration projects, the Department of Administration began to lay the groundwork for the emerging "broadband" pay plan design and administration.

The 59th Legislature in 2005 continued moving forward with the open range and broadband concept, perhaps most visibly by repealing the separate pay plans for state teachers and blue-collar workers.²² (The pay plan for liquor store clerks was repealed in 1995 because state liquor stores were "privatized" and the clerks were replaced by owner-operators or private sector employees.)

In 2007, the 60th Legislature completed the transition to the broadband pay concept by directing the Department of Administration to implement the broadband pay plan in all state agencies and repealing the statutory 25-grade pay plan that was established in 1977 and revised through 2005.²³ In replac-

ing the 25-grade plan, the legislation codified the “broadband pay plan” in concept and required the department to establish nine pay bands each comprised of a minimum and maximum salary and to adopt an entry salary, market salary, and maximum salary for each occupation.

The department was to continue conducting a biennial salary survey and analyzing the “relevant labor market,” as it had since 1991, in adopting pay bands and occupational pay ranges. In doing so, the department would fulfill one of the statutory purposes of the pay plan, specifically providing “the market-based compensation necessary to attract and retain competent and qualified employees....”²⁴

The Department of Administration continued to implement another purpose and intent of the pay plan by administering “the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.”²⁵

Legislatures during the first decade of the 21st century seemingly tied statutory pay adjustments more to economic and fiscal conditions and projections than to general inflation or changes in the labor markets. Legislatively enacted pay increases ranged from a low of 0 percent in FY 2004 and FY 2010 to highs of 4.2 percent in FY 2007 and 4 percent in FY 2002 and FY 2003. The increases showed little correlation with inflation, which ranged between a low of -0.4 percent in FY 2009 and a high of 3.8 percent in 2008. Even so, statutory increases from 2001 through 2010 averaged 2.7 percent annually, compared with average inflation of 2.4 percent annually.

In 2009, the 61st Legislature revised the purpose and intent of the broadband pay plan. The purpose of the plan to “provide market-based compensation” that had existed since 1979 was changed to codify the Legislature’s revised intent “that compensation plans for state employees... be based, in part, on an analysis of the labor market as provided by the department [of administration] in a biennial salary survey.”²⁶ The intent that the pay program be administered, in part, on the basis of “merit” was changed to instead be based, in part, on “competency.”

With the global economic woes encountered beginning in 2008, the 61st and 62nd legislatures in 2009 and 2011 also determined that the state was not “fiscally able” to provide statutory pay increases and did not provide appropriations for base pay increases for more than four and one-half years, from Oct. 1, 2008, through June 30, 2013.²⁷

Nevertheless, during the biennium various agencies did increase pay for some individuals through promotions, recognition of enhanced competency, reclassification, and a variety of other means. News reports and testimony early in 2013

indicated that approximately one-half of all executive branch employees received pay increases during the 2012-2013 biennium. The news prompted a number of legislators to investigate further and, ultimately, the Legislature declined to ratify agreements reached in labor negotiations prior to the 63rd legislative session.

However, legislators in 2013 appropriated sufficient funds to provide an average increase of 3 percent in state employees’ base pay in both FY 2014 and FY 2015, considerably less than the amounts needed to fund the two 5 percent annual increases that had been negotiated in 2012.²⁸ Apparently intending to clarify legislative intent, HB 13 revised section 2-18-301, MCA, which now states that state employee compensation “be based on an analysis and comparison of the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming.” Even so, the statute still requires the department to continue biennially surveying salaries within the broader public and private sector labor markets in which Montana state government competes for certain employees. For good or ill, the statute does not state or even suggest the relationship or interaction that should exist between the four-state analysis and the broader labor market analysis. Of course, legislators also adopted HJR 17, requesting the Legislative Finance Committee to study state employee pay.

So there you have it: a quick overview of the history and development of the broadband pay plan, Montana’s state employee compensation plan. Going forward, all parties to the HJR 17 study might be wise to take note of historian Howard Zinn’s²⁹ admonition:

History is important. If you don't know history it is as if you were born yesterday. And if you were born yesterday, anybody up there in a position of power can tell you anything, and you have no way of checking up on it.

¹ The Legislative Services Division was actually established in 1995. Before that, what is now the LSD was referred to as the Legislative Council.

² Sec. 4, Ch. 563, L. 1977.

³ See Sec. 59-908, RCM, et seq. Statutorily, the heads of individual agencies had the authority to retain and terminate employees within their respective agencies, but could set an employee’s pay only as authorized by the Board of Examiners.

⁴ From Rep. Gibson’s testimony given at hearings on HJR 17 and from House second reading debate on HJR 17, March 18, 2013.

⁵ From Sen. Sales’ testimony given during Senate second reading debate on HJR 17, April 9, 2013.

⁶ There were actually 29 grades because each grade from 9 through 12 was also assigned a “half grade.”

⁷The gap between step 1 and 2 in each grade was about 2.3 percent.

⁸Rep. Carroll South, HB 834 (1977) sponsor, in testimony to the Joint Select Committee on Employee Compensation, April 2, 1977. As should be expected, the bill's provisions changed through the legislative process and the actual increases adopted in the pay plan differed from Rep. South's original plan as stated in his testimony.

⁹Testimony on HB 834 by Montana State AFL-CIO Executive Director Jim Murry, Minutes of the Joint Select Committee on Employee Pay, April 2, 1977, p. 3.

¹⁰Testimony on HB 834 by Tom Schneider of the Montana Public Employees Association, Minutes of the Joint Select Committee on Employee Pay, April 2, 1977, p. 4. From the introduced version of HB 834, Section 6 stated: "Meritorious promotions. In addition to the pay increases provided above [in the matrix], each agency director may grant intra-grade promotions to employees who have demonstrated exceptionally meritorious performance. The total cost of such promotions may not exceed 1/2 of 1% of total budgeted wages and salaries as approved by the budget director in the operational budget. Promotions are exclusively a management prerogative and, notwithstanding any other provision of law, are not negotiable." Section 6 ultimately was stricken from the bill.

¹¹Under the RCM-to-MCA recodification that occurred by 1979, the 1977 "pay plan" was generally codified in Title 2, Chapter 18, MCA, especially Part 3 of that chapter.

¹²Ch. 678, L. 1979.

¹³Average annual increases in base pay and in CPI inflation were as follows: under Gov. Tom Judge (1977-1980) base pay about 10 percent for lowest grades, 6 percent for middle grades, 3.7 percent for higher grades, CPI inflation 9.7 percent; under Gov. Ted Schwinden (1981-88), base pay 5.1 percent, CPI inflation 4.6 percent; and under Gov. Stephens (1989-1992) base pay 3.1 percent, CPI inflation 4.35 percent.

¹⁴There is no indication in any of the legislation that funds were appropriated to provide additional pay for promotions or reclassifications. Further, it has been longstanding practice of Montana legislatures past and present to budget personal services costs by factoring in "vacancy savings" of about 4 percent a year, meaning that for every \$1 of budgeted personal services costs, the legislatures have appropriated 96 cents.

¹⁵The CSEC had recognized the relevant labor market as 12 states -- ND, SD, WY, ID, UT, NM, NV, AZ, CO, MN, OR, and WA -- throughout its study, but narrowed it to only five states -- ND, SD, WY, ID, and WA -- and other Montana employers at the very end of the study. See *Montana State Employee Compensation: A Market-Based Plan*, by the Committee on State Employee Compensation, Sheri S. Heffelfinger, ed., December 1990.

¹⁶*Montana State Employee Compensation: A Market-Based Plan*, CSEC, 1990, pp. v-vi.

¹⁷*Ibid.*, p. vi.

¹⁸*Ibid.*, p. vii.

¹⁹Eliminating "steps" occurred in the main pay plan only. The pay plans for retail liquor clerks and blue-collar workers didn't have steps to eliminate, and state teachers retained their "step and lane" matrix pay plan.

²⁰The 7.6 percent and 5.2 percent increases were averages across all grades and employees paid under the main pay plan. At Grade 12, step 7, or "Market Salary," employees received an increase of 8.2 percent in FY 1992 and 3 percent in FY 1993. State-employed teachers at Lane BA+3 averaged increases of 5.1 percent in FY 1992 and 3.1 percent in FY 1993. State liquor store clerks at L5 saw average increases of 7.5 percent in FY 1992 and 4.6 percent in FY 1993. Blue-collar workers at B7 received an average increase of 6.3 percent in FY 1992 and 3.9 percent in FY 1993. In percentage terms, lower grades of positions typically received larger increases than positions at higher grades.

²¹Ch. 558, L. 1999.

²²Ch. 6, L. 2005.

²³Ch. 81, L. 2007.

²⁴Section 2-18-301(1), MCA. The term "market-based" compensation was added to the purpose section in 1991 when the Legislature initiated the "open range" pay plan.

²⁵See 2-18-301(6), MCA. The provisions of subsection (6) were adopted in 1979 as Sec. 3, Ch. 678, L. 1979.

²⁶Section 3, Ch. 7, L. 2009.

²⁷The organized employees' unions in 2008 negotiated a pay freeze for FY 2010 and FY 2011 and the 62nd Legislature, in 2011, did not pass HB 13, the pay bill, thereby freezing base pay for FY 2012 and FY 2013, as well.

²⁸Ch. 385, L. 2013, adopted as House Bill 13.

²⁹Howard Zinn was an American historian, author, playwright, and social activist. He was a political science professor at Boston University for 24 years and taught history at Spelman College for seven years. Zinn wrote numerous books, including *A People's History of the United States*. From "Howard Zinn, Historian, Dies at 87," *The New York Times*, Jan. 28, 2010, available at www.nytimes.com/2010/01/28/us/28zinn.html.